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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-765

BYRON MORTON MILLER,
Petitioner,

vs.

BOARD OF LAW EXAMINERS, STATE OF TENNESSEE,
Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI

HUGH T. SHELTON, JR.
810 South Garden Street
Columbia, Tennessee 38401
Counsel for Respondent

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St. 63101 314-231-4477

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STATUTE INVOLVED

The state statute involved is Tennessee Code Annotated 29-101 through 110 of which Sections 103 and 104 are copied hereafter.

29-103. Examination of Applicants.—There shall be an examination of persons applying for license to practice as attorneys and counselors at law at the cities of Knoxville, Nashville, and Memphis, respec-

tively, and at such other places and times as the Supreme Court may direct. The Supreme Court shall prescribe rules to regulate the admission of persons to practice law and providing for a uniform system of examinations, which shall govern and control admission to practice law, and such board in the performance of its duties.

29-104. Certification and Admission of Successful Applicants.—Such board shall certify to the Supreme Court the names of all applicants who shall have passed the required examination, **and who are determined by said board to be of full age, and of such reputation and character as to be likely to contribute to upholding the high standards of the legal profession.*** Upon such certificate, if the Supreme Court shall find that such person is of full age and good moral character, and otherwise qualified, it shall enter an order licensing and admitting him to practice as attorney, solicitor and counselor in all the courts of the state, which license if procured by fraud, may be revoked at any time within two (2) years.

STATEMENT

We adopt the statement of the Petitioner except that 29-104, Tennessee Code Annotated, is misquoted in Petitioner's brief so that the lines emphasized in our citation were omitted. In addition, 29-103, Tennessee Code Annotated, provided that the Supreme Court shall prescribe rules to regulate the admission of persons to practice law and the Supreme Court of Tennessee did adopt a rule of the Court designated as Rule 37, Section 15 (Appendix, page A-1) of which provides an opportunity for any aggrieved applicant to request a hearing.

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* Emphasis supplied.

Tennessee Code Annotated 29-104, vests with the Board of Law Examiners the responsibility to certify qualified persons to the Supreme Court who may then enter an order licensing such persons as attorneys. This was done in the case of the Petitioner. Subsequently, the Board of Law Examiners determined that there were certain misrepresentations of fact without which the original certificate would not have been issued. The Board of Law Examiners was confronted with the fact that its original certification was in error. Although outside the record, and outside the issues raised as we can see them, notice (Appendix, page A-2) was given on January 20, 1971 to Petitioner.

ARGUMENT

The issue of whether or not Petitioner received notice of the charge of fraud in the procurement of a license was not raised by the Petitioner in the Supreme Court of Tennessee and if it had been, evidence (Appendix, page A-2) of this fact would have been introduced in that tribunal.

The sole question is whether or not Tennessee Code Annotated 29-104, together with the other paragraphs of that section of the Code, is unconstitutional for failure to provide the Respondent with procedural due process.

Rule 37 of the Supreme Court of Tennessee was adopted pursuant to 29-103, Tennessee Code Annotated, and Section 15 of that Rule, with the right of review in the Supreme Court of Tennessee, incorporated therein, provides procedural due process.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should not be granted.

Respectfully submitted

HUGH T. SHELTON, JR.
810 South Garden Street
Columbia, Tennessee 38401
Counsel for Respondent

SHELTON & LAWWELL
810 South Garden Street
Columbia, Tennessee 38401

APPENDIX

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Section 15. The Court will entertain no application from any person whomsoever, who may be affected directly or indirectly by the foregoing Rules, for any change or modification therein, or for their construction. All persons having any grievance resulting or arising from the enforcement of Rule No. 37 and/or any Section thereof (other than a grievance because of failure to pass the bar examination) shall make application to the Board of Law Examiners for a hearing by said Board by serving a written request for a hearing upon the Secretary of the Board within fifteen (15) days after notice of the action by said Board. The written request for the hearing made to the Board shall advise the Board of the matters desired to be covered at the hearing. The petitioner shall have the right to be represented by counsel and present evidence at the time and place fixed by the Board for the hearing. In any matter the Board may order a hearing on its own motion, either before or after action taken by it.

In connection with such hearings, the Board may cause subpoenas to issue for such witnesses as petitioner may, in good faith and for good cause, request, in the manner set forth below in these rules. Any member of the Board may hold hearings when authorized by the Board to do so, but any decision shall be by a majority of the Board.

The board's decision upon such hearing shall be made in writing, and a copy thereof shall be mailed or delivered to the petitioner. An aggrieved party may petition the Court for a review of any action taken by the Board and the same shall be considered as under the common law writ of certiorari. After the grant of the writ of certiorari, the Board shall cause to be made, certified by the Secretary of the Board, and forwarded to the Court a com-

plete transcript of the proceedings of the hearing. The Court, on application of the Board, may make such orders as it may consider appropriate with regard to payment of or security for the costs and other expenses of hearings before the Court, and the Board may require payment of or security for the costs and other expenses of the hearing before the Board as it deems appropriate.

The Board is authorized to request the State or local bar association to furnish counsel to assist the Board in investigation, preparation for hearings, and in the conduct of hearings.

Board of Law Examiners
of Tennessee

January 20, 1971

Mr. Byron Morton Miller
One Hundred Oaks Office Building
Nashville, Tennessee

Dear Mr. Miller:

Pursuant to Section 29-104, Tennessee Code Annotated, the Board of Law Examiners certified you to the Supreme Court in response to which a license to practice law was issued by the Court to you on February 4, 1970.

Since that time, information has been supplied the Board of Law Examiners which, if true, is the basis for a revocation of your license by the Supreme Court of Tennessee under the same above mentioned code section.

We are advised that the following misrepresentations of fact have occurred:

1. A letter dated July 17, 1968 from Noble W. Lee, Dean, John Marshall Law School, to Memphis State

University Law School states that you were, at that time, a student in good standing and eligible to return to the John Marshall Law School, when in fact, you were under suspension for academic deficiencies. The signature of "Noble W. Lee" is not his or the signature of any person authorized to sign for him. This letter enclosed a transcript which is the subject of Paragraph 2.

2. Transcript from John Marshall Law School has the grades on Property II, Federal Procedure and Business Association, changed from "D" to "C". Status of student is changed from "Suspend" to "Off Pro".

3. Certificate of Course of Legal Study, a document required in connection with the application for a license to practice law, erred in its recitation that you were enrolled in Memphis State from February, 1965 and attended school to May, 1969, and the signature of "R. D. Cox" is not his or the signature of any person authorized to sign for him.

4. Misrepresentations contained in application to Board of Law Examiners:

(a) Question No. 2 recites residence in Memphis, Tennessee, from February, 1965 to date of application which is incorrect.

(b) Question No. 4 (c) recites attendance at Memphis State University Law School from February, 1965 to May 31, 1969, which is incorrect.

(c) Question No. 6 denies a record of any employment which is incorrect.

(d) Question No. 18 (b) denies that you were discharged from any employment which is incorrect.

If you wish to deny the foregoing, please respond with an explanation following the outline adopted in this letter.

If the foregoing is substantially true, you are requested to voluntarily relinquish your license to practice law and the Supreme Court will adopt an order revoking your right to practice in the Courts of the State of Tennessee.

In the absence of a satisfactory explanation by April 3, 1971, the Board of Law Examiners will certify to the Supreme Court that the Board would not have certified you for a license to practice law if it had knowledge of the foregoing circumstances, that therefore, your license to practice law has been procured by fraud and the petition will request that said license be revoked.

Yours very truly

s/ HUGH T. SHELTON, JR.
HUGH T. SHELTON, JR.

HTS/jr

cc: Mr. Harry W. Laughlin, Member of Board of Law Examiners

Mr. J. Thomas Mann, Member of Board of Law Examiners

Mrs. Janice A. Falk, Executive Secretary of Board of Law Examiners